

Plaintiffs' Direct Testimony Affidavit for Expert Clay Busker

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IMRAN KHAN, et al.,

Plaintiffs,

v.

No. 7:20-cv-07561

BOARD OF DIRECTORS OF PENTEGRA
DEFINED CONTRIBUTION PLAN, et al,

Defendants.

AFFIDAVIT OF CLAY BUSKER

I, Clay Busker, being of lawful age, hereby declare the following facts and professional opinions as my direct testimony as an expert witness for Plaintiffs in the non-jury portion of this case.

I. Introduction

A. Assignment

1. I have been engaged as an expert by Schlichter Bogard LLP (“Counsel”), counsel for Plaintiffs in this matter, as a forensic accountant in connection with Plaintiffs’ claims against the Board of Directors of Pentegra Defined Contribution Plan, Pentegra Services, Inc. (“PSI”), John E. Pinto, Sandra L. McGoldrick, Lisa A. Schlehuber, Michael N. Lussier, William E. Hawkins, Jr., and George W. Hermann. In addition to my direct testimony during the jury trial portion, I was asked to interpret the Plan’s General Ledgers to identify the amounts that the Plan paid to PSI from October 1, 2014 through October 2023. I was asked to bring the amounts paid by the Plan forward through February 16, 2024 to account for the lost investment opportunity using two different measures: the Plan’s overall rate of return and an S&P 500 index mutual fund’s return.

2. For my direct testimony, I have relied on my experience and I have reviewed documents, information, and data produced by Defendants and third parties.

B. Qualifications

3. I am the Managing Director at B. Riley Advisory Services, which is a national specialty financial advisory services firm providing solutions for complex business problems. The firm is built around a team of professionals who are deeply experienced in a variety of industries and practice through four core service lines: Bankruptcy & Restructuring, Forensic Accounting & Litigation Support, Corporate Finance & Valuation, and Real Estate & Construction Consulting.

4. I am a Certified Public Accountant (“CPA”) with over 25 years of experience in public accounting, forensic accounting and litigation support, insurance loss accounting, economic damages, and financial analysis. In addition, I have been a receiver or Chief Restructuring Officer of operating businesses, participated in corporate restructurings, and provided due diligence services.

5. In the forensic accounting area, I have been retained as an expert in both state and federal court matters to assess and quantify economic damages. I have worked on matters throughout the United States on behalf of law firms, government agencies, such as the Department of Justice, and Fortune 500 companies. In addition, my experience includes performing internal corporate investigations related to fraud or white collar crime, performing due diligence activities related to debt and equity instruments, calculating business interruption and extra expense claims for both the insured and the insurer, negotiating with creditors and vendors, and performing turnaround/restructuring activities.

6. I received my B.A. from Wake Forest University, and my M.B.A. from New York University’s Stern School of Business with a concentration in Accounting and Finance. I am a member of the Georgia Society of Certified Public Accounts and the American Institute of Certified Public Accountants. My Curriculum Vitae is identified as Exhibit A, which sets out additional information about my qualifications and a list of cases where I have provided testimony.

II. Expert Testimony

7. Applying my experience as a forensic accountant and my experience with General Ledgers, I identified the total amount that the Plan paid to PSI from 2014 through October 2023 based on the Plan’s General Ledger maintained by PSI. EX0336, PENT_0231253 (2014); EX0337, PENT_0235865 (2015); EX0338, PENT_0191469 (2016); EX0339, PENT_0430997

(2017); EX0340, PENT_0430999 (2018); EX0341, PENT_0431000 (2019); EX0342, PENT_0430998 (2020); EX0344, PENT_0434079 (2021); EX0345, PENT_0434080 (2022); EX0346, PENT_0434081 (2023). The amounts reflected in the General Ledger are consistent with the amounts reported in the Forms 5500 for the Plan filed with the Department of Labor. *See* EX0779–0787 (2014–2022 Plan Forms 5500).

8. The total amount for base, per-participant, and asset-based fees paid by the Plan to PSI are set forth in the following table. I specifically excluded transactional type fees, including loan fees and distribution fees,

Year	Amount
2014	\$8,897,868
2015	\$9,235,440
2016	\$9,202,754
2017	\$9,305,355
2018	\$9,685,962
2019	\$9,431,780
2020	\$9,311,403
2021	\$10,481,893
2022	\$9,614,215
10/2023	\$7,441,159
Total	\$92,607,829

9. The amounts paid by the Plan were brought forward to their current value, as of February 16, 2024, assuming that those amounts had remained in the Plan and invested in participant accounts. The rates used to bring these amounts to the current value was the actual portfolio returns of the Plan (“Portfolio Return”) and the Vanguard Institutional Index Fund, Institutional Plus shares (VHIX) (“Vanguard Return”). The Vanguard Institutional Index Fund is a proxy for the return of the S&P 500 index.

10. The Portfolio Return and the Vanguard Return are summarized in the below table.

Calculation of Portfolio Returns			
Year	VIIIIX Total Return for the Period	Yearly Portfolio Return	Yearly Variance
	A	B	C=A-B
2014	13.68%	8.27%	5.41%
2015	1.39%	0.40%	0.99%
2016	11.95%	8.86%	3.09%
2017	21.82%	16.05%	5.77%
2018	-4.41%	-4.69%	0.28%
2019	31.48%	22.04%	9.44%
2020	18.41%	16.55%	1.86%
2021	28.69%	16.34%	12.35%
2022	-18.13%	-14.90%	-3.23%
Compound Annual Growth 2014 - 2022	10.54%	7.03%	3.51%
Period Ending	VIIIIX Total Return for the Period ^[1]	Historical Variance	Estimated Portfolio Return
	D	C	E=D-C
12/31/23	26.26%	3.51%	22.75%
2/16/24	5.14%	3.51%	1.63%

11. The current value using the Portfolio Return from October 1, 2014, through February 16, 2024 is \$130,493,728. The current value using the Vanguard Return over the same period is \$157,033,846.

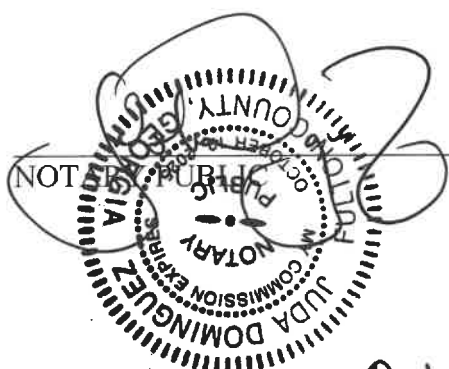
I swear under penalty and perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

DATED: February 29, 2024



Clay Busker

Sworn to and subscribed before me this 29th day of February, 2024.



My Commission Expires: Oct 12, 2024



**W. Clay Busker, CPA
Resume**

SUMMARY

Mr. Busker has more than 25 years experience in forensic accounting; including internal corporate investigations, complex damage scenarios, insurance loss accounting and financial analysis. In addition, he has been a receiver of operating businesses, participated in corporate restructurings, provided due diligence services and performed financial statement audits.

**RELEVANT
EXPERIENCE**

B. Riley Advisory Services (Formerly GlassRatner Advisory and Capital Group, LLC) 2008 – present

**Managing Director
Atlanta, Georgia**

B. Riley Advisory Services is a national specialty financial advisory services firm providing solutions for complex business situations. Our firm is built around a team of professionals who have been in the trenches and are focused on project execution, from acting as Financial Advisor to the Creditors' Committee to being retained to testify as an expert witness to planning and executing a major acquisition among other roles. Our professionals are deeply experienced in a variety of industries practiced through our 4 core service lines: Bankruptcy & Restructuring, Forensic Accounting & Litigation Support, Corporate Finance & Valuation, and Real Estate & Construction Consulting.

Tauber & Balser, P.C. 2003 - 2008

**Senior Manager
Atlanta, Georgia**

Tauber & Balser was a single office full service accounting firm with a national footprint. Mr. Busker was a member of the Forensic Accounting Services practice group and primarily focused on complex transactional and financial disputes, lost profits/economic damages assessments, white collar crime investigations and funds tracing.



Kroll, Inc. 2001 - 2003

Manager
Atlanta, Georgia

Kroll is the world's largest risk mitigation consulting firm. Mr. Busker was a Manager in the firm's financial services division and specialized in providing internal corporate/fraud investigations and litigation support services.

Arthur Andersen, LLP 1994 - 2001

Manager – Strategic, Financial and Economic Consulting Group
Atlanta, Georgia and New York, New York, 1996 - 2001,

Manager in the Arthur Andersen practice group that provided forensic and litigation accounting services to attorneys and corporations. Also performed corporate restructuring and turnaround assignments

Senior – Commercial Products Business Advisory Services
New York, New York, 1994 - 1996

Assisted in the performance of audits, reviews and compilations of financial statements for large privately held companies and small publicly traded firms.

CERTIFICATIONS

- Certified Public Accountant (CPA) – Georgia - 1999

EDUCATION

- New York University Stern School of Business, New York, New York
 Masters in Business Administration with a concentration in Accounting and Finance
- Wake Forest University, Winston Salem, North Carolina
 Bachelor of Arts in History (cum laude) with Honors

MEMBERSHIPS

- American Institute of Certified Public Accountants (AICPA)
- The Georgia Society of Certified Public Accountants



W. Clay Busker, CPA
Expert Testimony
Publications
Speaking Engagements

Expert Testimony

The Visionary, Books+Café LLC v. Bank OZK
 American Arbitration Association
 Case No. 01-22-0001-1503
 Evidence given by arbitration
July 2023

Retained by: **Bank OZK**
 Counsel: Ron Bingham, Esq.
 John Thompson, Esq.
 Adams and Reese LLP

Imran Khan, et al. v. Board of Directors of Pentegra Defined Contribution Plan, et al.
 U.S. District Court for the Southern District of New York
 Case No. 7:20-CV-07561
 Evidence given by deposition
October 2022

Retained by: **Imran Khan, et al. (the Class)**
 Counsel: Troy A. Doles, Esq.
 Schlichter Bogard & Denton LLP

T.F.R. Enterprises, Inc. v. Florida Department of Transportation, et al.
 Circuit Court of the Seventh Judicial Circuit for Volusia County, Florida
 Case No. 2019-10501 CIDL
 Evidence given by deposition
September 2022

Retained by: **T.F.R. Enterprises, Inc.**
 Counsel: Joseph R. Young, Esq.
 Smith, Currie & Hancock, LLP

Schneider Hotels, LLC and Schneider Ground Company (Hotels) LLC, v. Flood Brothers, Inc.
 U.S. District Court for the Western District of Kentucky, Louisville Division
 Case No. 3:21-cv-00133-DJH-CHL
 Evidence given by deposition
July 2022

Retained by: **Schneider Hotels, LLC and Schneider Ground Company (Hotels) LLC**
 Counsel: David Kaplan, Esq.
 Kaplan Johnson Abate & Bird, LLC

Appeal of AISG, Inc. under contract no. W5J9JE-10C-0039
 Armed Services Board of Contract Appeals
 ASBCA Nos. 58696, 59151
 Evidence given by hearing
September 2018

Retained by: **AISG, Inc.**
 Counsel: Lochlin Samples, Esq.
 Smith, Currie & Hancock, LLP



Clement Morales-Arcadio, et al. v. Shannon Produce Farms, Inc., et al.
U.S. District Court for the Southern District of Georgia, Statesboro Division
Case No. 6:0-CV-062 (BAE)
Evidence given by deposition
May 2007

Retained by: **Shannon Produce Farms, Inc.**
Counsel: J. Larry Stine, Esq.
Ray Perez, Esq.
Wimberly, Lawson, Steckel, Weathersby & Schneider, P.C.

Publications

Background Checks SmartBusiness Atlanta, April 2007

Setting the Tone at the Top SmartBusiness Atlanta, May 2005

Speaking Engagements

Georgia Society of Certified Public Accountants 2022 Fraud and Forensic Accounting
Conference: Real Estate Fund Development Structures and Issues, *Atlanta, GA* –
September 2022

Southern Loss Association: Business Interruption in Practice, *Atlanta, GA* - *August 2007*